



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 6, 2011

By Hand

Hon. Robert P. Patterson
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Larry Seabrook
S1 10 Cr. 87 (RPP)

Dear Judge Patterson:

The Government writes to express its concern about comments that defense counsel made to a member of the media yesterday evening concerning the jury's ongoing deliberations. Local Criminal Rule 23.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York bars lawyers associated with a criminal case from releasing "non-public information or opinion" that a reasonable person would expect to be publicly disseminated, "if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice." *See* Rule 23.1(a). Of particular relevance here is Subsection (d) of the rule, which provides examples of subject matters where the requisite likelihood of interference is presumed, including "[a]ny opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case," Rule 23.1(d)(7).

At the conclusion of the proceedings yesterday, defense counsel told a member of the media – as reported in the New York Times – that "the jury hasn't accepted the government's theory of the case," and that "[p]eople shouldn't be asked to compromise their views for efficiency or expediency."¹ Defense counsel's comment regarding the jury's deliberations was misleading; because the deliberations are ongoing, the jury plainly has not yet accepted or rejected any theory. Moreover, the comment appears to violate Rule 23.1(a) & (d)(7), which presumes a violation with respect to any opinion offered as to the merits of the case or the evidence in the case. Although the Court has instructed the jury not to read or listen to any media reports concerning the case, there is a risk that the jury could inadvertently be exposed to such media reports. In fact, defense counsel's comment that the jury "shouldn't be asked to compromise their views," were the jury exposed to it, could have the effect of hardening the lack of consensus and negating any further instructions by the Court that the jurors should keep an open mind to each others' views so that they may in good faith reach a consensus if one is available. It is therefore troubling that, knowing the jury is in the process of deliberating, defense counsel chose to offer his own opinions on those deliberations. It is

¹ A copy of the article in which defense counsel is quoted is enclosed with this letter.

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particularly troubling that he provided those opinions to a newspaper reporter, knowing his opinions would be publicly disseminated. Such conduct – the substance of the statement, as well as its timing – is improper and an apparent violation of the Court's local rules.

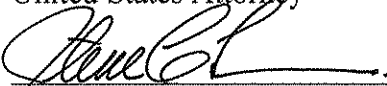
Accordingly, the Government respectfully requests that the Court instruct defense counsel to act in conformity with the local rules and refrain from making similar statements to the media in the future regarding the jury's deliberations, the evidence in the case, and the defendant's guilt or innocence that could taint the jury's deliberations.

Thank you for your consideration of this matter.

Respectfully submitted,

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United States Attorney

By:



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Encl.

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